

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MARK A. DAVIS,

Plaintiff,

v.

Case No. 10-10398

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

**OPINION AND ORDER (1) SUSTAINING DEFENDANT’S OBJECTIONS; (2)
REJECTING THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION;
AND (3) DIRECTING THAT THE CASE REMAIN ON REFERENCE TO THE
MAGISTRATE JUDGE**

Plaintiff initiated this case by filing a complaint on January 28, 2010. On April 14, 2010, the magistrate judge to whom this case was referred ordered Plaintiff to show cause why this case should not be dismissed for failure to prosecute because the Plaintiff had not yet served Defendant. Plaintiff failed to respond, and, on May 19, 2010, the magistrate judge filed a report and recommendation (“R&R”) recommending dismissal of this case with prejudice for failure to prosecute. On May 26, 2010, Plaintiff served the Commissioner of Social Security, the United States Attorney General, and the United States Attorney for the Eastern District of Michigan by certified mail. On May 27, 2010, Plaintiff also effected personal service on the United States Attorney.

On May 31, 2010, Plaintiff objected to the magistrate judge’s R&R. Plaintiff argues that good cause exists for his “untimely” service. After reviewing the time line, however, the court finds that Plaintiff effected timely service. Under Federal Rule of Civil Procedure 4(m), a plaintiff has 120 days after a complaint is filed to effect service. Although Plaintiff failed to respond to the order to show cause, he served Defendant

within this time period and the service was therefore timely. Moreover, Plaintiff's attorney's health concerns are an adequate explanation for the failure to respond. The court will sustain Plaintiff's objections to the R&R.

For the reasons stated above, IT IS ORDERED that Defendant's Objections [Dkt. # 10] are SUSTAINED, and the Magistrate Judge's Report and Recommendation [Dkt. # 5] is REJECTED. **The case remains on reference to the magistrate judge** for his supervision of further proceedings.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: July 12, 2010

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, July 12, 2010, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522